

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

C. M. COLLINS, N. J. LUNDY, and R. C. L. MAYS, individually and on behalf of all others similarly situated,

Plaintiffs,

V.

**CATASTROPHE RESPONSE UNIT,
INC. and
CATASTROPHE RESPONSE UNIT
USA, INC. ,**

Defendants.

CIVIL ACTION NO.
4:22-cv-01073-SDJ

**Collective Action under
29 U.S.C. § 216(b)**

JURY DEMANDED

PLAINTIFFS' UNOPPOSED SECOND MOTION FOR EXTENSION

COME NOW, Plaintiffs, and hereby move for an unopposed second extension of their deadline to file a motion under 29 U.S.C. § 216(b) for determination of whether putative members of the Fair Labor Standards Act (“FLSA”) collective are similarly situated to Plaintiffs and for authorization to send notice of this action to such persons (“Motion for Determination & Notice”). This request is based on the Parties’ ongoing Phase I discovery needs and their ongoing good-faith efforts to potentially resolve the Phase I issues by agreement. In support of this Second Motion for Extension, Plaintiffs would show as follows:

I. PROCEDURAL HISTORY AND BASIS FOR MOTION

1. On December 27, 2022, the three named Plaintiffs filed this suit, complaining of overtime violations by Defendants under the FLSA. The suit was filed on Plaintiffs' behalf as well as all similarly situated current and former employees of Defendants, pursuant to 29 U.S.C. § 216(b). In accordance with *Swales v. KLLM Transport Services*, 985 F.3d 430 (5th Cir. 2021), this

collective action suit would need to take place in two phases, with Phase I involving the consideration of whether the putative members of the FLSA collective are similarly situated to Plaintiffs and whether notice is authorized.

2. On April 10, 2023 (Dkt. No. 18), the Court set September 12, 2023 as the deadline for Plaintiffs' Motion for Determination & Notice. After the Court set this deadline, Plaintiffs filed 6 new opt-in notices. The Parties exchanged discovery requests and responses on all 9 plaintiffs/opt-ins, and Defendants expressed an interest in deposing all 9 plaintiffs/opt-ins. Given Plaintiffs' concerns about certain deficiencies that they believed existed in Defendants' discovery responses that would need resolution before the Motion for Determination & Notice, as well as the logistics of coordinating and taking so many depositions, on July 7, 2023, the Parties filed a Joint Motion for Extension of the Notice Motion deadline (Dkt. No. 24). On July 12, 2023, the Court granted the motion (Dkt. No. 25) and issued an Amended Scheduling Order (Dkt. No. 26) resetting the Motion for Determination & Notice filing deadline to October 10, 2023.

3. Since that time, the Parties have engaged in substantial, productive, and timely discovery efforts in an effort to meet the current October 10 deadline. The Parties have taken 5 depositions (with a 6th deposition canceled on the day of due to the opt-in's decision to withdraw). However, Defendants still need to take an additional 4 plaintiff/opt-in depositions, which are currently scheduled for mid-October. Furthermore, as a result of testimony provided by Defendants' corporate representative on August 28, Plaintiffs need to take 3 additional depositions following the completion of Defendants' plaintiff/opt-in depositions. The purpose of all of these depositions is so that the Parties can brief their respective positions regarding Plaintiffs' Motion for Determination & Notice, and Plaintiffs are concerned that even if the depositions could be completed before October 10 (which does not appear reasonably possible), Plaintiffs would not

be able to use those deposition transcripts to assist with their Motion for Determination & Notice.

4. Furthermore, Plaintiffs and Defendants resolved all of the discovery issues Plaintiffs had previously presented to the Court for hearing. Defendants' supplementation pursuant to one of those resolutions will take some time to complete. In addition, on September 19, 2023, counsel for Defendants sent a discovery deficiency letter to counsel for Plaintiffs that the Parties are working to resolve, and that may require individual supplementation by each of the 8 remaining plaintiffs/opt-ins.

5. At the same time, since September 18, 2023, counsel for the Parties have been communicating about the potential for resolving at least the Phase I issues and potentially some of the Phase II issues by agreement. While the Parties cannot guarantee that they will come to any such agreement, the details and logistics of an agreement in a case like this are relatively complicated. The Parties will therefore need additional time to potentially work out such details, but are continuing to move forward with the remaining depositions and resolution of discovery issues to ensure no further delay of the Phase I discovery.

With all of that considered, Plaintiffs make this unopposed request for an extension of the Motion for Determination & Notice filing deadline. Considering the upcoming Thanksgiving, Christmas, and New Year's holidays in conjunction with the briefing timeline employed by the Court in its first two scheduling orders, the Parties have come up with the following suggested new deadline and briefing schedule for the Motion for Determination & Notice, Response, and Reply. It considers the interruptions of those holidays while providing what the Parties believe is enough time to complete the Phase I discovery and move the Phase I notice issue to resolution.

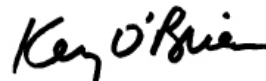
November 28, 2023: Deadline for Plaintiffs to file motion under 29 U.S.C. § 216(b) for determination of whether putative members of the Fair Labor Standards Act ("FLSA") collective are similarly situated to Plaintiffs and for authorization to send notice of this action to such persons.

December 19, 2023: Deadline for Defendants to file their response(s) to Plaintiffs' motion under 29 U.S.C. § 216(b).

January 4, 2024: Deadline for Plaintiffs to file any reply in support of their motion under 29 U.S.C. § 216(b).

If the Court is inclined to grant this Second Motion for Extension, the Court of course is free to set different deadlines within the Court's judgment. This Motion for Extension is made in good faith by Plaintiffs and with due consideration to the importance to all of the Parties of the substantial issues to be addressed and resolved by the Court in Phase I of this case.

Respectfully submitted,



Kerry V. O'Brien
Texas Bar No. 24038469



1011 Westlake Drive
Austin, Texas 78746
phone: (512) 410-1960
fax: (512) 410-6171
email: ko@obrienlawpc.com

LEAD COUNSEL FOR PLAINTIFFS

and

/s/ Travis Gasper

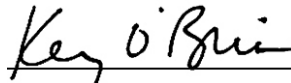
Travis Gasper
Texas Bar No. 24096881

GASPER LAW, PLLC
1408 N. Riverfront Blvd., Suite 323
Dallas, Texas 75207
phone: (972) 504-1420
fax: (833) 957-2957
email: travis@travisgasper.com

CO-COUNSEL FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

On September 26, 2023, I discussed the relief sought herein with Defendants' counsel. Defendants' counsel has communicated that Defendants are not opposed to the relief sought herein.



Kerry V. O'Brien,
Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

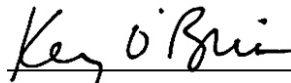
I hereby certify that a true and correct copy of the foregoing instrument was served on the following counsel of record via electronic mail transmission this the 28th day of September 2023:

Monte K. Hurst
State Bar No. 00796802
Monte.Hurst@hallettperrin.com

Kristen A. Laster
State Bar No. 24076499
KBrumbalow@hallettperrin.com

HALLETT & PERRIN, P.C.
1445 Ross Avenue, Suite 2400
Dallas, Texas 75202
phone: 214-953-0053
fax: 214-922-4142

*Counsel for Defendants Catastrophe Response
Unit, Inc. and Catastrophe Response Unit
USA, Inc.*



Kerry V. O'Brien,
Lead Counsel for Plaintiffs